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JOHN F. DAVIS,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 536

THOMAS C. KEININGHAM, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner, Thomas C. Keiningham, respectfully prays for writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia, entered on September 18, 1962, affirming the judgment of the District Court of the United States for the District of Columbia.

THE OPINION BELOW

The opinion of the United States District Court of Appeals for the District of Columbia has not yet been reported. The opinion has been printed in the Appendix.

JURISDICTION

Jurisdiction to issue the writ is found in the provisions of Section 240 (a) of the Judicial Code (28 U.S.C.A., Sec. 1254).

QUESTIONS PRESENTED

I.

Whether it was error for the trial court to hold that a police officer has the right to interrogate a person not charged with a crime and where the officer is not investigating a crime.

II.

Whether it was error for the trial court to hold that the officer has a right to seize the brief case of petitioner, where there was no warrant for his arrest and where petitioner had committed no offense in the officer's presence.

STATUTE INVOLVED

Amendment IV—Constitution of The United States

Searches and Seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On December 11, 1961, petitioner alighted from a taxicab carrying a briefcase, in the afternoon, in the 700 block of Twelfth Street, N.W., Washington, D. C. (JA 5). Officer Layton and petitioner saw each other as petitioner departed the taxicab. (JA 5). Each was known to the other. Petitioner stood in a doorway, and the officer also stood in a doorway a short distance away. (JA 5). After a short period of time, the officer approached petitioner and a conversation ensued. (JA 7). The briefcase had been placed on the ground beside him by the petitioner. The officer inquired as to what was in the briefcase and the petitioner denied that it was

his. (JA 7). After further conversation the officer opened the briefcase and found incriminating evidence therein. (JA 8). As a result, petitioner was convicted of operating a lottery.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The decision of the United States Court of Appeals for the District of Columbia Circuit conflicts with applicable decisions of that court, as well as those of the Supreme Court of The United States.

The Appellate Court has sanctioned the confronting of persons on the street, where police had knowledge that a crime had been committed and were investigating that crime. See *Campbell* v. *United States,* 289 F 2d, 775; *Ellis* v. *United States,* 264 F 2d, 372; *Green* v. *United States,* 259 F 2d 180; *Lee* v. *United States,* 221 F 2d, 29, and *Ellison* v. *United States,* 206 F 2d, 476.

In the instant case there had been no information imparted to the officer that a crime had been committed or was about to be committed. The petitioner was not conducting himself in a manner which would give rise to inquiry, nor had he committed an offense in the officer's presence. There was no warrant of arrest. (JA 9).

The circumstances of confronting the petitioner by the officer amounted to an arrest. *Henry* v. *United States,* 361 U.S. 98, 28 LW 4015, and *Rios* v. *United States,* 364 U.S. 253, 4 L ed 2d, 1688, support petitioner's position. The conduct of the officer in the instant case amounted to an arrest at common law, under the present British rule, and the case law of the Supreme Court of The United States.

As regards an alleged "invitation" extended to the officer to look in the briefcase, circumstances such as these were condemned by the same appellate court in *Judd* v. *United States,* 190 F 2d, 649, and *Higgins* v. *United States,* 209 F 2d, 819.

On July 19, 1962, the Court of Appeals dismissed this case as "frivolous", and on September 18, 1962, denied a petition for rehearing en banc. The Court of Appeals referred in its opinion to "abandonment in the presence of the officer." If the placing of the briefcase at his side was "abandonment", the same court held in *Work* v. *United States*, 100 U. S. App. D.C., 237, that the placing of materials in a trash can was not.

Petitioner respectfully represents that opinions of the Supreme Court of The United States cited herein, support his position that the conduct of the officer amounted to an arrest which failed to have for its basis either a warrant or probable cause. He further respectfully represents that the holding of the appellate court was a departure from its prior opinions regarding arrest and confrontation, and that petitioner's rights under the Constitution of The United States were violated.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

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